A

Cheong Kam Kuen v Public Prosecutor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–172 OF 2011(W)

B

ZULKEFLI CJ (MALAYA), RICHARD MALANJUM CJ (SABAH AND SARAWAK), HASHIM YUSOFF, ABDULL HAMID EMBONG AND SULONG MATJERAIE FCJJ

22 OCTOBER 2012

C

Criminal Procedure — Appeal — Conviction, against — Appellant charged with murder — Whether failure to call deceased's father to testify that he identified dead body to pathologist resulted in fatal gap in case for prosecution — Whether there was intention to inflict specific injury in natural course of nature to cause death — Whether safe to convict as charged — Penal Code ss 302 & 304(a)

D

When the staff of Hotel Fujisan, Kuala Lumpur, attempted to gain entry into a room occupied by the appellant and one Liew Pai Sea ('the deceased'), the appellant refused to open the door to them. The hotel manager then alerted the

E

police. The police officers, who arrived at the scene, were also refused entry by the appellant, who threatened to murder the deceased if the police attempted to enter the room. Through a half open door the police had observed the appellant standing naked holding the deceased, whose hands and legs were tied, by the hair. When the police finally gained entry into the room, the

F

appellant had been seen dragging the deceased into the bathroom, while holding a broken bottle and threatening to kill her. The appellant was subsequently arrested and charged with the murder of the deceased. Although the deceased had suffered from multiple injuries, the cause of death, as found by the pathologist ('SP10'), was severe head injury due to trauma impact. In his

G

defence the appellant claimed that the deceased and he had been imbibing drinks and drugs called 'syabu' before they got into a heated quarrel. The appellant also claimed that he had tied the deceased's hands and legs because he was afraid she would start throwing things at him. The trial judge was satisfied that based on the nature and number of injuries, the appellant had the

H

intention to cause the death of the deceased and that he had caused her death. The trial judge also addressed his mind to all the possible defences for the murder charge including the defence of a sudden fight, self defence and intoxication before dismissing the same. Consequently, the appellant was convicted by the High Court for the offence of murder under s 302 of the

I

Penal Code ('Code'). The appellant appealed to the Court of Appeal, which agreed with the findings of the trial judge and affirmed the appellant's conviction under s 302 of the Code. Hence the present appeal wherein the appellant argued that there was no evidence led to prove the identity of the deceased for the prosecution to have established a prima facie case. The

appellant claimed that the prosecution's failure to call the deceased's father, who had identified the dead body to SP10 before she conducted the post-mortem examination, had led to SP10's evidence of identification being disregarded as hearsay. The appellant further submitted that the evidence adduced by the prosecution had not established that the appellant had the intention to kill the deceased; that there was insufficient evidence led from SP10 to prove that the injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death; and that both the trial judge and the judges of the Court of Appeal had erred in not properly evaluating the appellant's defence.

Held, substituting the conviction for the offence of murder for the lesser offence of culpable homicide not amounting to murder and sentencing the appellant to a term of imprisonment of 20 years:

(1) The appellant's contention that the prosecution's failure to call the deceased's father, who had identified the body of the deceased to SP10 and upon whose identification of the dead body the post-mortem report was based, would result in SP10's evidence being disregarded as hearsay, had no merit. In the present case, SP10 was present in the hotel room where the body of the deceased was found face down with the deceased's hands, knees and ankles tied together by ligature material before she had asked the police to transfer the body to the hospital. It was also the evidence of SP10 that during the post-mortem process after identification of the body she had documented the ligature and thereafter proceeded to remove the ligature before proceeding with the post-mortem process. Thus, it was the same body that was found in the hotel room and that was identified by the deceased's father to SP10. Further, there was also the identification evidence of the police photographer who was present at the scene of the crime to take the photographs of the deceased and who was present during the post-mortem conducted on the deceased by SP10 (see paras 11–15).

(2) The evidence of the nature of the injuries sustained by the deceased was sufficient to prove an intention on the part of the appellant to cause bodily injury to the deceased. However, this evidence did not establish that the appellant had the intention to cause the death of the deceased. Both the trial judge and the judges of the Court of Appeal had not addressed themselves on the fine distinction between ss 299 and 300 of the Code before coming to a correct conclusion. SP10 had given evidence that the deceased had suffered multiple injuries but she had also stated that apart from the injuries to the head, the other injuries by themselves were not fatal. Based on the evidence of SP10 it was not proved beyond reasonable doubt that the injuries inflicted upon the deceased were sufficient in the ordinary course of nature to cause death. In view of the nature of the medical evidence given by SP10, the present case would fall

within the first part of s 304(a) of the Code or the lesser offence of culpable homicide not amounting to murder (see paras 20–24).

(3) In view of the gravity of the offence and the multiple injuries inflicted by the appellant on the deceased body, he should be sentenced to a term of imprisonment of twenty years to take effect from the date of his arrest (see para 25).

[Bahasa Malaysia summary

Apabila pekerja Hotel Fujisan, Kuala Lumpur, cuba memasuki bilik yang didiami perayu dan Liew Pai Sea ('si mati'), perayu enggan membuka pintu untuk mereka. Pengurus hotel itu kemudian memanggil polis. Pegawai polis, yang tiba di tempat kejadian, juga tidak diberi masuk oleh perayu, yang mengugut untuk membunuh si mati jika pihak polis cuba memasuki bilik itu. Melalui pintu yang separuh terbuka polis melihat perayu berdiri tanpa pakaian memegang si mati, yang mana tangan dan kakinya diikat, dengan tali. Apabila pihak polis akhirnya dapat masuk ke dalam bilik itu, perayu dilihat mengheret si mati ke dalam bilik air, sambil memegang botol yang pecah dan mengugut untuk membunuhnya. Perayu kemudian telah ditangkap dan dituduh membunuh si mati. Walaupun si mati mengalami pelbagai kecederaan, sebab kematian, seperti mana didapati oleh ahli patologi ('SP10'), adalah kerana kecederaan teruk di kepala akibat kesan trauma. Dalam pembelaannya perayu mendakwa bahawa si mati dan dia telah minum arak dan mengambil dadah dipanggil 'syabu' sebelum bertengkar. Perayu juga mendakwa bahawa dia mengikat tangan dan kaki si mati kerana dia takut si mati mula membaling benda kepadanya. Hakim perbicaraan berpuas hati berdasarkan sifat dan bilangan kecederaan, yang perayu mempunyai niat untuk menyebabkan kematian si mati dan bahawa dia telah menyebabkan kematiannya. Hakim perbicaraan meneliti semua pembelaan yang mungkin untuk pertuduhan bunuh termasuklah pembelaan pergaduhan tiba-tiba, pembelaan terhadap diri dan keadaan mabuk sebelum menolak yang berikut. Seterusnya, perayu telah disabitkan oleh Mahkamah Tinggi kerana kesalahan membunuh di bawah s 302 Kanun Keseksaan ('Kanun'). Perayu merayu ke Mahkamah Rayuan, yang bersetuju dengan penemuan hakim perbicaraan an mengesahkan sabitan perayu di bawah s 302 Kanun. Justeru rayuan ini yang mana perayu berhujah bahawa tiada keterangan yang membawa kepada pembuktian identiti si mati untuk pendakwaan membuktikan kes prima facie. Perayu mendakwa bahawa kegagalan pendakwaan untuk memanggil bapa si mati, yang telah mengenal pasti mayat si mati kepada SP10 sebelum dia melakukan pemeriksaan post-mortem, telah membawa kepada keterangan pengecaman SP10 yang tidak dihiraukan kerana dianggap sebagai dengar cakap. Perayu selanjutnya berhujah bahawa keterangan yang dikemukakan oleh pendakwaan tidak membuktikan bahawa perayu mempunyai niat membunuh si mati; bahawa tidak terdapat keterangan mencukupi daripada SP10 untuk membuktikan bahawa kecederaan yang dialami pada si mati mencukupi dalam keadaan biasa

untuk menyebabkan kematian; dan kedua-dua hakim perbicaraan dan hakim-hakim Mahkamah Rayuan terkhilaf kerana tidak menilai pembelaan perayu sewajarnya.

Diputuskan, menggantikan sabitan untuk kesalahan membunuh dengan kesalahan yang lebih ringan iaitu homisid salah yang tidak terjumlah kepada kesalahan membunuh dan menjatuhkan hukuman penjara 20 tahunan ke atas perayu:

(1) Hujah perayu bahawa kegagalan pendakwaan untuk memanggil bapa si mati, yang telah mengecam mayat si mati kepada SP10 dan selepas pengecaman mayat itu laporan post-mortem telah dibuat, yang menyebabkan keterangan SP10 dianggap sebagai dengar cakap, tiada merit. Dalam kes ini, SP10 ada dalam bilik hotel di mana mayat si mati ditemui dalam keadaan telungkup dengan tangan, lutut dan pergelangan kaki si mati diikat dengan kekang tali sebelum meneruskan dengan proses post-mortem. Oleh itu, ia adalah mayat sama yang ditemui dalam bilik hotel dan yang dikenal pasti oleh bapa si mati kepada SP10. Selanjutnya, terdapat juga keterangan pengecaman oleh jurugambar polis yang hadir di tempat kejadian jenayah untuk mengambil gambar si mati dan yang hadir semasa post-mortem dilakukan ke atas si mati oleh SP10 (lihat perenggan 11–15).

(2) Keterangan berhubung sifat kecederaan yang dialami si mati adalah mencukupi untuk membutikan niat di pihak perayu untuk menyebabkan kecederaan kepada badan si mati. Walau bagaimanapun, keterangan ini tidak membuktikan bahawa perayu mempunyai niat untuk menyebabkan kematian si mati. Kedua-dua hakim pebicaraan dan hakim-hakim Mahkamah Rayuan tidak mengutarakan diri mereka berhubung perbezaan antara ss 299 dan 300 Kanun sebelum tiba kepada kesimpulan yang sewajarnya. SP10 telah memberikan keterangan bahawa si mati mengalami pelbagai kecederaan tetapi dia juga menyatakan selain daripada kecederaan di kepala, kecederaan lain itu sendiri tidak membawa maut. Berdasarkan keterangan SP10 adalah tidak dibuktikan melampaui keraguan munasabah bahawa kecederaan yang dialami si mati mencukupi dalam keadaan biasa untuk menyebabkan kematian. Berdasarkan sifat keterangan perubatan yang diberikan oleh SP10, kes ini terjatuh dalam bahagian pertama s 304(a) Kanun atau kesalahan lebih ringan homisid salah yang tidak terjumlah kepada kesalahan membunuh (lihat perenggan 20–24).

(3) Berdasarkan keseriusan kesalahan dan pelbagai kecederaan yang disebabkan oleh perayu ke atas badan si mati, dia patut dihukum penjara 20 tahun bermula dari tarikh tangkapannya (lihat perenggan 25).]

Notes

For cases on conviction, against, see 5(1) *Mallal's Digest* (4th Ed, 2010 Resissue) paras 332–382.

Cases referred to

Fazal Din v PP [1949] MLJ 123 (distd)
Tham Kai Yau & Ors v PP [1977] 1 MLJ 174, FC (refd)

Legislation referred to

Penal Code ss 84, 85, 86, 299, 300, 302, 304, 304(a)

Appeal from: Criminal Appeal No 05–142 of 2009(w) (Court of Appeal, Putrajaya)

Gobind Singh Deo (S Prakash with him) (Gobind Singh Deo & Co) for the appellant.
Nurulhuda Nur'aini bt Mohd Nor (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Zulkefli CJ (Malaya) (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the Court of Appeal in dismissing the appellant's appeal against his conviction by the High Court for an offence of murder under s 302 of the Penal Code.

[2] The charge framed against the appellant as amended at the close of the prosecution case reads as follows:

> Bahawa kamu di antara 22.02.2005 jam 11.00 malam hingga 23.02.2005 jam 7.00 pagi, di bilik No. 3022 Hotel Fajisan, No. 45, Jalan Barat, Off Jalan Imbi di dalam Daerah Dang Wangi di dalam Wilayah Persekutuan Kuala Lumpur dengan niat telah melakukan bunuh sehingga menyebabkan kematian seorang perempuan Cina nama Liew Pal Sea KPT: 821011–08–5934 oleh yang demikian kamu telah melakukan kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

THE CASE FOR THE PROSECUTION

[3] The relevant facts in support of the case for the prosecution are as follows:

(a) the appellant and the deceased occupied Room No 3022 of Hotel Fujisan, Kuala Lumpur. The room was registered under the appellant's name since 12 September 2004;

(b) on 23 February 2005 at about 6.55am, SP2, an employee of the hotel together with another employee by the name of Tan noticed a puddle of red water outside of room 3022;

(c) SP2 knocked on the door and asked about the puddle of red water but the appellant refused to open the door. Instead the appellant told SP2 to be quiet and not to disturb him;

(d) after being informed by SP2, SP3 the hotel manager went up to the said room and knocked on the door asking the appellant to open it but the appellant replied aggressively *'jika kamu membuka pintu seseorang akan memukul saya'* and that *'lebih baik kamu panggil polis'*;

(e) the police were immediately called. SP5 and SP11 were the first to arrive at the scene. They had asked the appellant to open the door but the appellant replied *'kalau you masuk saya akan bunuh ini orang'* and *'lu balik, jangan kacau saya'*;

(f) SP4 who arrived later instructed SP5 and SP11 to break the door. The half broken door however could not be opened as it was blocked by a bed and the TV rack. SP4 managed to see through the broken door that the room was in a total mess and the appellant standing naked holding a VCD player in one hand and holding the deceased by the hair with the other hand. The deceased's hands and legs were tied;

(g) when the police finally gained entry into the room, the appellant went into the bathroom dragging the deceased along. The appellant then stood on the toilet bowl and was seen holding a broken bottle shouting *'saya bunuh dia orang', saya bunuh dia orang'*. The appellant was subsequently arrested;

(h) the cause of death as found by the pathologist SP10 was severe head injury due to trauma impact which in itself can cause death. Other internal injuries present were fracture of left eighth, ninth and tenth ribs. There were other multiple injuries which were not fatal as per post-mortem report P37. SP10 said that the chances of survival to a human with injury to the head and face are very slim; and

(i) the chemist SP8 who conducted the toxicology test on the urine and blood of the deceased confirmed them to contain amphetamine and methamphetamine respectively (P34). According to SP8, *'seseorang di bawah pengaruh dadah jenis dadah 'psycostimulant' boleh pengaruhi pemikiran kita'*.

THE CASE FOR THE DEFENCE

[4] The appellant in his defence amongst others adduced the following relevant facts:

The appellant said that he and the deceased had a few drinks and were taking drugs called 'syabu' before they got into a quarrel which ended with them throwing things at each other. He said the quarrel was due to the fact that the deceased had won a four digit lottery and the deceased would give it to her boyfriend and that the deceased had transferred the appellant's house to her boyfriend's name. The appellant also said that he tied the deceased as he was afraid she would throw things at him and that most of the time had to defend himself against her.

FINDINGS OF THE HIGH COURT AND THE COURT OF APPEAL

[5] The learned trial judge of the High Court in his judgment had dealt with the elements needed to prove the murder charge and was satisfied that based on the nature and number of injuries, the appellant had the intention to cause the death of the deceased. The learned trial judge was equally satisfied that the appellant caused the death based on the fact that he was the only person with the deceased and based on the circumstances in which he was found wherein he was armed with one hand and holding the deceased with the other.

[6] The learned trial judge had addressed his mind to all the possible defences for a murder charge under s 300 including defences under ss 84, 85 and 86 of the Penal Code. The learned trial judge ruled that on the defence of sudden fight in the heat of passion, there was no sudden fight. The evidence showed that though there was an argument, it was not a sudden quarrel in the heat of passion. Even if there was one, the appellant had acted in a cruel manner and had taken undue advantage based on the injuries found on the deceased and the fact that the deceased was tied with a rope.

[7] On self-defence the learned trial judge found that since the deceased sustained several fatal injuries and was tied up such defence could not have supported. This is more so when there was no evidence that the appellant had suffered any injury. The defence of grave and sudden provocation was also rejected. It was not enough for the appellant to show that he was provoked into losing his self-control. It must be shown that the provocation was grave and sudden and must have by its gravity and suddenness caused a reasonable man to lose his self-control and induced him to do the act which caused the death of the deceased.

[8] On the defence of intoxication under ss 85 and 86 of the Penal Code, the learned trial judge found that the appellant was not too intoxicated as not to know what he was doing or that the act was wrong. This was based on the fact that the appellant was able to tie up the deceased and had blocked the entrance to the room preventing other people access to the room.

[9] The Court of Appeal in its decision agreed with the findings of the learned trial judge of the High Court and affirmed the decision of the High Court in finding the appellant guilty of the charge of murder under s 302 of the Penal Code.

DECISION OF THIS COURT

[10] Learned counsel for the appellant in his submission before us advanced four main grounds why the conviction of the appellant for murder cannot stand and they are as follows:

(a) there was no evidence led to prove the identity of the deceased resulting in the prosecution not having made out a prima facie case;

(b) the evidence adduced did not establish that the appellant had the intention to kill the deceased;

(c) there was no evidence led from SP10, the pathologist as to whether the injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death; and

(d) the learned trial judge of the High Court and the Court of Appeal failed to properly evaluate the defence of the appellant, which is to the effect that he had a serious argument with the deceased as a result of which the deceased attacked him.

[11] We shall first deal with the first ground. SP10, Dr Siew Shue Feng the pathologist said that the post-mortem she prepared was of a deceased named Liew Pai Sea. SP10 further went on to say that the body of the deceased was identified by her father Liew Chee Keong. However, the prosecution did not call Liew Chee Keong, nor offer him as a witness throughout the trial. It was the contention of the defence that this would result in the evidence of SP10, as regards identification being hearsay resulting in a fatal gap in the case for the prosecution. The case of *Fazal Din v Public Prosecutor* [1949] MLJ 123 was cited for this proposition wherein it was held by the Court of Appeal that where a case involved the death of a person on which post-mortem examination has been performed evidence must be given that the body on which the medical officer conducted the post-mortem examination was the body of the deceased in respect of whose death this charge has been laid and that because of the failure to do so, the conviction for murder could not be sustained. In *Fazal Din*'s case the prosecution failed to call a police constable PC9185, a relevant witness to testify that he identified the dead body to the medical officer even though that police constable was present in court at the trial.

[12] With respect to the above contention advanced for the appellant, we find that the factual circumstances in *Fazal Din*'s case can be distinguished

from the present case on the issues of identification and the identity of the deceased. We therefore find there is no merit on this first ground advanced for the appellant for the following reasons:

[13] It is to be noted in the present case SP10, the pathologist was present at the scene of the crime where the body of the deceased was found at the said hotel room. SP10 was called by ASP Eu ('SP12') the investigating officer to visit the scene of the death in room 3022, Hotel Fujisan to assist in the investigation. SP10 was later requested by SP12 to conduct the post-mortem on the same day 23 February 2005 at 9.40pm.

[14] It is in evidence SP10 said that at the scene of the crime she found the body of the deceased was naked lying face down in the bathroom of the room, her hands, knees and ankles tight together by ligature material. SP10 then asked the police to transfer the body to the hospital. It is also in the evidence of SP10 that during the post-mortem process after identification of the body she documented the ligature and thereafter removed the ligature and examined the wounds externally on the body. Thus, it was the same body as found in the hotel room which was identified by Liew Chee Keong, the father of the deceased to SP10.

[15] Still on the issue of identification and identity of the deceased in the present case we find there is also the evidence of the police photographer, SP1 who was at the scene of the crime to take the photographs of the deceased. It is to be noted SP1 was present during the post-mortem conducted on the deceased by SP10.

[16] We shall now deal with the second, third and fourth grounds raised by the appellant together as they relate to the question of what was the appropriate offence committed by the appellant in the circumstances of the case. Learned counsel for the appellant submitted that the learned trial judge misdirected himself when he failed to rule that the evidence adduced by the prosecution did not establish the appellant had the intention to kill the deceased. Learned counsel for the appellant also submitted that the injuries inflicted on the deceased were not sufficient in the ordinary course of nature to cause death. This in our view would call for the discussion on the distinction between the provisions of s 299 and s 300 of the Penal Code to determine whether the offence committed by the appellant falls within the offence of murder under s 302 of the Penal Code or it falls within the offence of culpable homicide not amounting to murder under s 304 of the Penal Code.

[17] Section 299 of the Penal Code enacts that a person commits culpable homicide, if the act by which the death is caused is done: (a) with the intention

to cause death; (b) with the intention of causing such bodily injury as is likely to cause death; (c) with the knowledge that he is likely by such act to cause death.

[18] Section 300 of the Penal Code defines murder as follows: Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done: (1) with the intention of causing death; (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; (3) with the intention of causing such bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; (4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

[19] On the correct approach to the application of the two ss 299 and 300 of the Penal Code we would endorse the views expressed by Raja Azlan Shah FJ (as his Royal Highness then was) in the case of *Tham Kai Yau & Ors v Public Prosecutor* [1977] 1 MLJ 174 at p 176 as follows:

> Section 299 clearly defines the offence of culpable homicide. Culpable homicide may not amount to murder (a) where the evidence is sufficient to constitute murder, but one or more of the exceptions to s 300 of the Penal Code apply, and (b) where the necessary degree of mens rea specified in s 299 is present, but not the special degrees of mens rea referred to in s 300 of the Penal Code. We would like in this connection to express the need to bear in mind that all cases falling within s 300 of the Penal Code must necessarily fall within s 299, but all cases falling within s 299 do not necessarily fall within s 300. The first part of s 304 of the Penal Code covers cases which by reason of the exceptions are taken out of the purview of s 300, cll (1), (2) and (3) but otherwise would fall within it and also cases which fall within the second part of s 299, but not within s 300, cll (2) and (3). The second part of s 304 of the Penal Code covers cases falling within the third part of s 299 not falling within s 300, cl (4).

[20] In the present case it is our view based on the nature of the injuries sustained by the deceased there was evidence of an intention on the part of the appellant to cause bodily injury to the deceased. However, we do not agree with the finding of the learned trial judge that based on the nature and number of injuries, the appellant had the intention to cause death to the deceased. We noted that both the learned trial judge and the Court of Appeal in their decision did not address themselves on the fine distinction between ss 299 and 300 of the Penal Code before coming to a correct conclusion.

[21] We are in agreement with the submission of learned counsel for the appellant that there is no evidence led from SP10, the pathologist as to whether

the injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death. The evidence of SP10 is to the effect that the deceased suffered multiple injuries. She said:

> most of the injuries caused by the blunt object. However wound No. 52 caused by sharp object. (See page 70 of Appeal Record Volume 1)

SP10 further stated as follows:

> The injury to the head can cause death whereas the others are not fatal by itself.
>
> This kind of injury, the chances of survival to a human. In this particular case, the chances is very slim because the injury on the face and on the head. (See page 71 of Appeal Record Volume 1)

[22] It is to be noted SP10 is quite certain in her evidence that apart from injuries to the head, the other injuries by themselves were not fatal. In cross-examination by the defence as regards which injury caused the death, SP10 stated that some on the face and neck of the deceased and this is an accumulative effect rather than single injury. It is therefore clear that the injuries which caused the death to the deceased were those on the face and neck, not the head and that those injuries are not fatal by themselves.

[23] We are of the view based on the above evidence of SP10 it was not proved beyond reasonable doubt that those injuries inflicted upon the deceased were sufficient in the ordinary course of nature to cause death.

[24] In view of the nature of the medical evidence given by SP10, the pathologist as earlier highlighted, it is our considered view that the present case would fall within the second part of s 299 of the Penal Code. It is our judgment that this is a case which can reasonably be brought within the lesser offence of culpable homicide not amounting to murder, falling within the first part of s 304 (s 304(a)) of the Penal Code.

CONCLUSION

[25] For the reasons abovestated we set aside the conviction of the appellant for the offence of murder, and substitute it with one under the first part of s 304 (s 304(a)) of the Penal Code. On the sentence to be meted out on the appellant in view of the gravity of the offence and the multiple injuries inflicted by the

appellant on the deceased body, we sentence the appellant to a term of imprisonment of 20 years which is to take effect from the date of arrest.

Conviction for offence of murder substituted for lesser offence of culpable homicide not amounting to murder and appellant sentenced to a term of imprisonment of 20 years.

Reported by Kohila Nesan